



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AO-13-0163; AMS-FV-12-0069; FV13-905-1]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Hearing on Proposed Amendment of Marketing Order No.905

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 905 (order), that regulates the handling of oranges, grapefruit, tangerines, and tangelos (citrus) grown in Florida. Nine amendments are proposed by the Citrus Administrative Committee (committee), which is responsible for local administration of the order. These proposed amendments would: authorize regulation of new varieties and hybrids of citrus fruit, authorize the regulation of intrastate shipments of fruit, revise the process for redistricting the production area, change the term of office and tenure requirements for committee members, authorize mail balloting procedures for committee membership nominations, increase the capacity of financial reserve funds, authorize pack and container requirements

for domestic shipments and authorize different regulations for different markets, eliminate the use of separate acceptance statements in the nomination process, and require handlers to register with the committee.

In addition, the Agricultural Marketing Service (AMS) proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing. These proposed amendments are intended to update the order to reflect past changes in the industry and potential future changes, and to improve the operation and administration of the order.

DATES: The hearing dates are April 24, 2013, 9:00 a.m. to 5:00 p.m.; and continuing on April 25, 2013, at 9:00 a.m., if necessary, in Winter Haven, Florida.

ADDRESSES: The hearing will be held at the Florida Department of Agriculture and Consumer Services, 500 3rd Street NW, Winter Haven, Florida 33881.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, Post Office Box 952, Moab, UT 84532; Telephone: (202) 557-4783, Fax: (435) 259-1502, or Michelle Sharrow, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-

2491, Fax: (202) 720-8938, or E-mail:

Melissa.Schmaedick@ams.usda.gov or

Michelle.Sharrow@ams.usda.gov.

Small businesses may request information on this proceeding by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601-612) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments were recommended by the committee on July 17, 2012, and submitted to USDA on

October 25, 2012. After reviewing the proposals and other information submitted by the committee, USDA made a determination to schedule this matter for hearing.

The proposed amendments to the order recommended by the committee are summarized as follows:

1. Amend the definitions of "fruit" and "variety" in § 905.4 and § 905.5 to update terminology and authorize regulation of additional varieties and hybrids of citrus.

2. Amend the definition of "handle or ship" in § 905.9 to authorize regulation of intrastate shipments.

3. Amend § 905.14 to revise the process for redistricting the production area.

4. Amend § 905.20 to change the term of office of committee members from one to two years, and change the tenure requirements for committee members from three to four years.

5. Amend § 905.22 to authorize mail balloting procedures for committee membership nominations.

6. Amend § 905.42 to authorize the committee to increase the capacity of its financial reserve funds from approximately six months of a fiscal period's expenses to approximately two years' fiscal period's expenses.

7. Amend § 905.52 to authorize pack and container requirements for domestic shipments and authorize different regulations for different markets.

8. Amend § 905.28 to eliminate the use of separate acceptance statements in the nomination process.

9. Amend § 905.7 to require handlers to register with the committee.

The committee works with USDA in administering the order. These proposals submitted by the committee have not received the approval of USDA. The committee believes that its proposed amendments would update the order to address changes that have occurred in the industry and potential changes that could occur in the future. The amendments are intended to improve the operation and administration of the order.

In addition to the proposed amendments to the order, AMS proposes to make any such changes as may be necessary to the order to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining

whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary

of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Program, AMS. Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS

GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Citrus Administrative Committee:

Proposal Number 1

3. Revise § 905.4 to read as follows:

§ 905.4 Fruit.

Fruit means any or all varieties of the following types of citrus fruits grown in the production area:

(a) Citrus sinensis, Osbeck, commonly called "oranges";

(b) *Citrus paradisi*, MacFadyen, commonly called "grapefruit";

(c) *Citrus reticulata*, commonly called "tangerines" or "mandarin";

(d) *C. grandis* (L.); Osbeck, commonly called "pummelo"; and,

(e) "Citrus hybrids" that are hybrids between or among one or more of the four fruits (a) through (d) of this section and the following: trifoliate orange (*Poncirus trifoliate*), sour orange (*C. aurantium*), lemon (*C. limon*), lime (*C. aurantifolia*), citron (*C. medica*), kumquat (*Fortunella*, species), tangelo (*C. reticulata* x *C. paradisi* or *C. grandis*), tangor (*C. reticulata* x *C. sinensis*), and varieties of these species. In addition, citrus hybrids include: tangelo (*C. reticulata* x *C. paradisi* or *C. grandis*), tangor (*C. reticulata* x *C. sinensis*), and temple oranges, and varieties thereof.

4. Revise § 905.5 to read as follows:

§ 905.5 Variety.

Variety or varieties means any one or more of the following classifications or groupings of fruit:

(a) Oranges;

(1) Early and Midseason oranges

(2) Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type;

(3) Navel oranges

(b) Grapefruit;

(1) Red Grapefruit, to include all shades of color

(2) White Grapefruit

(c) Tangerines and Mandarins;

(1) Dancy and similar tangerines

(2) Robinson tangerines

(3) Honey tangerines

(4) Fallglo tangerines

(5) US Early Pride tangerines

(6) Sunburst tangerines

(7) W-Murcott tangerines

(8) Tangors

(d) Pummelos;

(1) Hirado Buntan and other pink seeded pummelos

(e) Citrus Hybrids;

(1) Tangelos

(i) Orlando Tangelo

(ii) Minneola Tangelo

(2) Temple Oranges

(f) Other varieties of citrus fruits specified in 905.4, including hybrids, as recommended and approved by

the Secretary: Provided, That in order to add any hybrid variety of citrus fruit to be regulated under this provision, such variety must exhibit similar characteristics and be subject to cultural practices common to existing regulated varieties.

Proposal Number 2

5. Revise § 905.9 to read as follows:

§ 905.9 Handle or Ship.

Handle or ship means to sell, transport, deliver, pack, prepare for market, grade, or in any other way to place fruit in the current of commerce within the production area or between any point in the production area and any point outside thereof.

Proposal Number 3

6. Revise § 905.14 to read as follows:

§ 905.14 Redistricting.

The committee may, with the approval of the Secretary, redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of districts, or both: Provided, That the membership shall consist of at least eight but not more than nine grower members, and any such change shall be based, insofar as practicable, upon the respective averages for the immediately preceding three fiscal periods of: (1)

The number of bearing trees in each district; (2) the volume of fresh fruit produced in each district; (3) the total number of acres of citrus in each district; and (4) other relevant factors. Each redistricting or reapportionment shall be announced on or prior to March 1 preceding the effective fiscal period.

Proposal Number 4

7. Revise § 905.20 to read as follows:

§ 905.20 Term of Office.

The term of office of members and alternate members shall begin on the first day of August of even-numbered years and continue for two years and until their successors are selected and have qualified. The consecutive terms of office of a member shall be limited to two terms. The terms of office of alternate members shall not be so limited. Members, their alternates, and their respective successors shall be nominated and selected by the Secretary as provided in § 905.22 and § 905.23.

Proposal Number 5

8. In § 905.22 revise paragraphs (a)(1) and (b)(1) and add a new paragraph (c) to read as follows:

§ 905.22 Nominations.

(a) Grower members. (1) The committee shall give public notice of a meeting of producers in each district to

be held not later than June 10th of even-numbered years, for the purpose of making nominations for grower members and alternate grower members. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern such meetings and the balloting thereat. The chairman of each meeting shall publicly announce at such meeting the names of the persons nominated, and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes so cast, the names of the persons nominated, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of June.

(2) * * *

(b) Shipper members. (1) The committee shall give public notice of a meeting for bona fide cooperative marketing organizations which are handlers, and a meeting for other handlers who are not so affiliated, to be held not later than June 10th of even-numbered years, for the purpose of making nominations for shipper members and their alternates. The committee, with the approval of the Secretary, shall prescribe uniform rules to govern each such meeting and the balloting thereat. The chairperson of each such meeting shall publicly announce at the meeting

the names of the persons nominated and the chairman and secretary of each such meeting shall transmit to the Secretary their certification as to the number of votes cast, the weight by volume of those shipments voted, and such other information as the Secretary may request. All nominations shall be submitted to the Secretary on or before the 20th day of June.

(2) * * *

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, nomination and election of members and alternate members to the committee may be conducted by mail, electronic mail, or other means according to rules and regulations recommended by the committee and approved by the Secretary.

Proposal Number 6

9. In § 905.42 revise the first sentence of paragraph (a) to read as follows:

§ 905.42 Handler's accounts.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: Provided, That funds already in the reserve do not exceed approximately two fiscal period's expenses. * * *

Proposal Number 7

10. In § 905.52 revise paragraphs (a) (4) and (a) (5) to read as follows:

§ 905.52 Issuance of regulations.

(a) * * *

(4) Establish, prescribe, and fix the size, capacity, weight, dimensions, marking (including labels and stamps), or pack of the container or containers which may be used in the packaging, transportation, sale, shipment, or other handling of fruit: Provided, That such regulation shall not authorize the use of any container or markings which are prohibited under Florida statutes and regulations effective thereunder.

(5) Provide that any or all requirements effective pursuant to paragraphs (a) (1), (2), (3), and (4) of this section applicable to the handling of fruit may be different for the handling of fruit within the production area, the handling of fruit for export, or for the handling of fruit between the production area and any point outside thereof within the United States: Provided, That such requirements shall not authorize the handling of fruit in any way that is prohibited under Florida statutes and regulations effective thereunder.

Proposal Number 8

11. Revise § 905.28 to read as follows:

§ 905.28 Qualification and Acceptance.

Any person nominated to serve as a member or alternate member of the committee shall, prior to selection by the Secretary, qualify by filing a written qualification and acceptance statement indicating such person's qualifications and willingness to serve in the position for which nominated.

Proposal Number 9

12. Revise § 905.7 to read as follows:

§ 905.7 Handler.

Handler is synonymous with shipper and means any person (except a common or contract carrier transporting fruit for another person) who, as owner, agent, or otherwise, handles fruit in fresh form, or causes fruit to be handled. Each handler shall be registered with the committee pursuant to rules recommended by the committee and approved by the Secretary.

Proposal submitted by USDA:

Proposal Number 10

Make other such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 22, 2013

Rex A. Barnes
Acting Administrator
Agricultural Marketing Service

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